

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 19, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSHUA DAVID FLEMING,

Petitioner,

v.

DONALD HOLBROOK,

Respondent.

NO: 2:21-CV-235-RMP

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS
AND VACATING ORDER
CONDITIONALLY GRANTING
PETITION

On August 3, 2021, Mr. Fleming filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus. ECF No. 1. On August 25, 2023, this Court conditionally granted Mr. Fleming's Petition. ECF No. 67. On September 1, 2023, Respondent filed a Motion to Stay the Writ Pending Appeal, stating that Respondent intends to file a timely notice of appeal of this Court's order granting Mr. Fleming's petition. ECF No. 69. On October 19, 2023, this Court granted Respondent's Motion to Stay the Writ. ECF No. 80.

On January 25, 2024, the Ninth Circuit filed an order dismissing Respondent's appeal, citing the parties' joint motion to dismiss. ECF No. 81. On August 6, 2024,

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND
VACATING ORDER CONDITIONALLY GRANTING PETITION ~ 1

1 this Court ordered the parties to show cause by August 21, 2024, as to why the Court
2 should not dismiss Petitioner's writ of habeas corpus and vacate the August 25,
3 2023, Order Conditionally Granting Petition for Writ of Habeas Corpus. ECF No.
4 82.

5 In response to the Show Cause Order, Respondent argues that the Court
6 should dismiss Mr. Fleming's petition and vacate its August 25, 2023, order. ECF
7 No. 83. Respondent states that while this Court's order granting Mr. Fleming's
8 petition was stayed, the state court vacated the underlying first-degree assault
9 conviction. ECF No. 83 at 2. Mr. Fleming then pled guilty to different offenses and
10 was sentenced on this new basis on January 18, 2024. *Id.* Respondent argues that
11 the resentencing mooted Mr. Fleming's petition, because the petition was based on a
12 conviction that has since been vacated. *Id.* Petitioner agrees with Respondent that
13 the Court should dismiss Petitioner's writ of habeas corpus and vacate the August
14 25, 2023, order. ECF No. 84 at 2.

15 Because the state court vacated the conviction underlying Mr. Fleming's
16 petition for writ of habeas corpus on January 18, 2024, *see* ECF No. 83-1 at 2, and
17 Mr. Fleming was resentenced based on his guilty pleas to different offenses, *see*
18 ECF No. 83-1 at 4–18, Mr. Fleming's petition for writ of habeas corpus is now
19 moot. Additionally, both parties agree that Mr. Fleming's petition should be
20 dismissed and the order conditionally granting the petition should be vacated. *See*
21 ECF Nos. 83 at 1–3; 84 at 2. Therefore, the Court finds good cause to dismiss Mr.

1 Fleming's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus, ECF No. 1,
2 and to vacate its Order Conditionally Granting Petition for Writ of Habeas Corpus,
3 ECF No. 67.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Petitioner Joshua David Fleming's Petition Under 28 U.S.C. § 2254 for
6 Writ of Habeas Corpus, **ECF No. 1**, is **DISMISSED**.

7 2. This Court's August 25, 2023, Order Conditionally Granting Petition for
8 Writ of Habeas Corpus, **ECF No. 67**, is **VACATED**.

9 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
10 Order, enter judgement as directed, provide copies to counsel, and **close the file**.

11 **DATED** August 19, 2024.

12
13 *s/ Rosanna Malouf Peterson*
14 ROSANNA MALOUF PETERSON
15 Senior United States District Judge
16
17
18
19
20
21